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REMARKS/ARGUMENTS

Claims 1-12 are currently pending in this application.

A restriction Requirement has been made under 35 U.S.C. 121 and 372, because the invention or group of inventions are not so linked as to form a single inventive concept under PCT Rule 13.1. The claims have been restricted to

Group I, claims 1,2, and 10-12, drawn to the compound of formula 1 and a process for making.

Group II, claims 3, 7 and 8, drawn to another process of making the compound of formula I.

Group III, claim 4, drawn to another process of making the compound of formula I.

Group IV, claim 5, drawn to another process of making the compound of formula I.

Group V, claim 6, drawn to a process of making an intermediate of formula II

Group VI, claim 9, drawn to yet another process of making an intermediate of Formula II.

Applicants' attorney respectfully traverses this restriction requirement as being in error. Attached to this paper is the International Preliminary Examination Report for the equivalent PCT application. The issue of unity of invention was dealt with in IPER and no lack of unity was found. Therefore, applicants' attorney submits that the Patent Office show deference to this determination unless clear error can be shown. Accordingly, applicants' attorney respectfully request withdrawal of the present restriction requirement.

Additionally, if the Patent Office wishes to pursue making a restriction requirement in the present application applicants' attorney respectfully requests that the restriction requirement be made in compliance with the MPEP. The method for determining unity of invention for the national stage of a PCT application is set forth in MPEP 1893.03 which states that

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"Once the nation stage application has been take up by the examiner, prosecution proceeds in the same manner as for a domestic application with the exceptions that;  
(A) the international filing date is the date to keep in mind when searching the prior art: and  
(B) unity of invention proceeds as under 37 CFR 1.475."

Consequently lack of unity for the present invention must be alleged under 37 CFR1.475, not MPEP 803.02. Accordingly, applicants' attorney respectfully submits that the restriction requirement provided was made in reliance on the wrong sections of the MPEP and is improper.

Applicants' attorney respectfully submits that if a restriction requirement is to be pursued by the Patent Office in the present application it should be made considering 37 CFR 1.475 and in view of Rule 13.2.

In reviewing 37 CFR1.475 states in part that:

(a) An international and a national stage application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept ("requirement of unity of invention"). Where a group of inventions is claimed in an application, the requirement of unity of invention shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

(b) An international or a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories:

(1) A product and a process specially adapted for the manufacture of said product; or

Inventive concept is further discussed in Rule 13.2 of the PCT Rules, Annex B. Both 37 CFR 1.475 and Rule 13.2 make clear that unity of invention exists when there is a technical relationship among the claimed inventions involving one or more of the same or corresponding "special technical features". The expression "special technical feature" ... are those technical

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features that define a contribution which each of the inventions, considered as a whole make over the prior art. Annex B of Rule 13.2 goes on to illustrate particular situations such as combinations of different categories of claims under subsection (e). In section (e) of Annex B it further states that:

(iii) in addition to an independent claim for a given product, an independent claim for a process specially adapted for the manufacture of the said product and an independent claim for an apparatus or means specifically designed for carrying out the said process, it being understood that a process is specially adapted for the manufacture of a product if it inherently results in the product and that an apparatus or means is specifically designed for carrying out a process if the contribution over the prior art of the apparatus or means corresponds to the contribution the process makes over the prior art. Thus, a process shall be considered to be *specially adapted for the manufacture of a product if the claimed process inherently results in the claimed product* with the technical relationship being present between the claimed product and claimed process. The words "specially adapted" are not intended to imply that the product could not also be manufactured by a different process. Also an apparatus or means shall be considered to be "specifically designed for carrying out" a claimed process if the contribution over the prior art of the apparatus or means corresponds to the contribution the process makes over the prior art. Consequently, it would not be sufficient that the apparatus or means is merely capable of being used in carrying out the claimed process. However, the expression "specifically designed" does not imply that the apparatus or means could not be used for carrying out another process, nor that the process could not be carried out using an alternative apparatus or means.

(emphasis added)

Applicants attorney respectfully submits that in applying these rules to claims 1-12 that the current restriction requirement is improper. Although, Groups I-IV and V-VI maybe optionally separable, Groups I-IV and V-VI are not separable under CFR1.475 and Rule 13.2. The common special technical feature of Groups I-IV has been recognized by the examiner as the pyrimidino core present in the claims of these Groups. Both, the product claimed and the process claimed in Groups I-VI have these features. Additionally in keeping with Rule 13.2 the process claims in Groups I-IV are all adapted to the manufacture of the same product, therefore, have unity of invention with the product claims. See Annex reproduced above highlighted

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language. Similarly, as was recognized by the examiner, Groups V-VI share a common special technical feature, in the benzene core present in those groupings of claims. Since Groups V-VI are directed to the manufacture of the same product, unity of invention exists with regard to Groups V-VI under Rule 13.2. Accordingly, applicants' attorney respectfully submits that the present restriction requirement for Groups I-IV and Groups V-VI are improper and should be withdrawn.

Solely to comply with CFR1.43 applicants' attorney elects Group I, without prejudice to applicants' right to petition for review of this restriction requirement.

Applicant respectfully requests a timely Notice of Allowance of claims 1-12.

Respectfully submitted,

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